

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

TO: The Commission

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**PETITION FOR CLARIFICATION AND/OR PARTIAL
RECONSIDERATION OF INTERIM LICENSING RULES**

Ameritech Mobile Services, Inc. (Ameritech), pursuant to Rule Section 1.429, hereby seeks clarification and/or partial reconsideration of the interim paging licensing rules adopted in the Commission's First Report and Order ("Interim Order"), WT Docket No. 96-18 and PP Docket No. 93-253, 61 Fed. Reg. 21380 (May 10, 1996). As discussed below, the Commission should be commended for responding to industry concerns in adopting interim licensing rules for paging applications. The steps taken in the Interim Order will go a long way toward accommodating the reasonable needs of incumbent licensees to expand and modify their paging systems. However, certain simple but important adjustments are needed in order for the interim rules to prevent a disruption of existing paging operations.

**I. Incumbent Licensees Should Be Allowed to Expand Within
40 Miles of Any Site Granted from a Pre-Freeze Application.**

The Interim Order grants desperately needed relief to the paging industry by allowing the filing of expansion applications by incumbent licensees. However, such

expansion applications can be filed only for sites within 40 miles of a co-channel station authorized to the applicant as of February 8, 1996 (i.e., the date on which the paging application freeze was imposed by the Commission's Notice of Proposed Rule Making in this proceeding). It is respectfully submitted that incumbent licensees should be allowed to expand within 40 miles of any site which is granted pursuant to an application filed prior to February 8, 1996, even if authority for the site is granted after that date. Such "pre-freeze" applications were not speculative in nature. In the 931 MHz band, many applications were pending for more than a year as of February 8, 1996, and have only recently been granted. Many remain pending. This processing delay has been due to circumstances beyond the control of paging licensees such as Ameritech, and appears to be related to problems caused by mutually exclusive filings in certain markets, coupled with the Commission's conversion to computerized processing of 931 MHz filings. The delay has only been exacerbated by government shutdowns and blizzards earlier this year.

The industry should not be penalized for delays which were beyond its control. More importantly, the public subscribers of existing paging services should not be deprived of urgently needed service improvements. The expansions and modifications proposed in 931 MHz applications pending as of February 8, 1996 reflect service improvements needed in 1995. These system modifications are now long overdue.¹ System expansions needed in 1996 and the foreseeable future involve sites which are within 40 miles of those applications which have been granted within the past few weeks,

¹ Indeed, Ameritech has constructed most of the facilities proposed in its 931 MHz applications pursuant to the Commission's pre-grant construction policy embodied in Rule Section 22.143, and is often commencing service to the public within hours of seeing the grant Public Notice.

or which are still pending. Therefore, it is vital that incumbent licensees be allowed to expand within 40 miles of any site which is granted pursuant to an application filed before the paging freeze.

It is possible that auction rules will be adopted before all pre-February 8 applications are processed. The Commission should continue to accept applications to expand within 40 miles of sites granted pursuant to pre-freeze filings, even if these filings are granted after the auction has commenced. Participants in the auction will be able to judge from the Commission's database with reasonable certainty the area in which incumbent licensees will have such expansion rights, and can adjust their bids accordingly. Without such protection, incumbent licensees will be unable to complete and/or improve needed coverage, to the detriment of the public subscribers (including doctors, ambulance services, police departments, and others concerned with the public welfare) who rely on existing paging services.

II. The Commission Should Restrict Competing Application Rights to Incumbent Co-channel Licensees.

The Commission has expressed great concern over consumer fraud and speculation in the paging application process. Interim Order at ¶ 19. It is therefore surprising that the Commission has decided to allow anyone to file a competing application on top of bona fide expansion proposals by incumbent exclusive paging channel licensees. See Interim Order at ¶ 26. Ironically, this decision will make each incumbent licensee more of a target for speculators than before the freeze was adopted. Application mills have been unable to practice their trade since the freeze was imposed. These mills will in all likelihood file competing proposals against most expansion applications which appear on Public Notice, since expansion filings will create their only opportunity to submit any

applications. In essence, the Interim Order will have funneled the efforts of application mills onto legitimate carriers, in a way that will frustrate vital expansion plans (since any competing filings will cause both applications to be held in abeyance, and dismissed upon adoption of auction rules).

Accordingly, it is vital that the Commission allow only co-channel licensees to file competing applications against an expansion proposal. Such restriction is reasonable in order to allow the Commission to achieve the goals of the Interim Order, by allowing incumbent licensees to apply for expansion of existing services. Under Section 309(a) of the Act, the Commission has the authority to set licensee eligibility standards. See also Section 309(j)(6)(E) of the Act. In U.S. v. Storer Broadcasting, 351 U.S. 192 (1956) the Court held that the Commission may establish licensee eligibility standards in rule making proceedings, provided such standards are supported by the record. The proposed restriction on competing applicants is a reasonable licensee eligibility standard, supported by the record in this proceeding: The comments filed overwhelmingly demonstrate that incumbent licensees must be given an opportunity to expand their existing coverage. Interim Order at ¶ 9.² And the Federal Trade Commission has indicated that unrestricted applicant eligibility has led to consumer fraud. Interim Order at ¶¶ 16-19.

The interim paging rules are by definition an extraordinary measure designed to afford relief to incumbent licensees so that the drastic changes which will be brought

² See also comments on the Commission's interim licensing rules, including, e.g., Comments of Pacific Bell at p. 2-3; Comments of Page Telecommunications L.L.C. at pp. 4-5; Comments of ProNet Inc. at p. 8; Comments of PageMart, Inc. at p. 4; Emergency Petition of the Coalition for a Competitive Paging Industry at pp. 13-14; Comments of Metrocall, Inc. at pp. 8-9; Comments of Mobilemedia Communications, Inc. at pp. 9-10; Comments of Teletouch Licenses, Inc. at p. 5; and Comments of Ameritech at pp. 8-9.

about by market area licensing do not adversely affect their public subscribers. It defies logic that the Commission would allow speculators and others to frustrate this much needed expansion right, by filing competing applications when they have no existing claim to the frequency in that area. Such "new" applicants will have their opportunity to apply for participation in the subsequent market area auction, so they will not be deprived of the right to participate in what is left of the paging spectrum. Indeed, the Commission is limiting competing applicants to co-channel licensees, in the case of shared paging frequencies. Interim Order at ¶¶ 30-32. The same approach should be followed for all paging channels.

CONCLUSION

As discussed above, the Interim Order took important steps toward accommodating the urgent needs of incumbent licensees which have been established as part of the record in this proceeding. The above modifications to the interim rules would help ensure that the Commission's intended relief is effective.

Respectfully submitted,

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